

NEW JERSEY. SUPREME COURT. &
International Graphophone Company)
versus } In Tort.
Thomas A. Edison }
1893-
✓

Note: Last action in case
Filed 4/2/94 - Seligman left
NY. for Calif. - was to be out
of town for several months -
only apptg committed to
take testimony

NEW JERSEY SUPREME COURT.

The International
Graphophone Co.,
Pltff.,
vs.
Thomas A. Edison,
Deft.

In Tort.

SUMMONS AND
DECLARATION.

A. Q. Keasbey & Sons,
Attys. of Plaintiff,
Prudential Building,
Newark, N. J.

1893-12-27

NEW JERSEY, SS.

The State of New Jersey, To the Sheriff of the
County of Essex, GREETING:

(L. S.)

We Command you to Summon THOMAS A. EDISON, to
be and appear before the Supreme Court of the State
of New Jersey, to be held at Trenton, in and for
said State, on the twenty seventh day of December instant, to ans-
wer unto THE INTERNATIONAL GRAPHOPHONE COMPANY in an action of
Tort to its damage Three hundred thousand dollars, as is said, and
have you then there this writ.

WITNESS, MERCER BRASLEY, Esquire, Chief Justice,

at Trenton aforesaid, the Twenty first day of De-
cember in the year One Thousand Eight Hundred and
Ninety Three.

BENJ. F. LEE,

Clerk.

A. Q. Keasbey & Sons,

Attorneys.

and Edison United Phonograph Company, at-
torneys for said inventions, and relating to the
rights of speaking machines, for the entire world, except the
United States and Canada, and by an agreement of the same date the
Edison United Phonograph Company granted to the Edison Phono-
graph Company the exclusive right, in all parts of the world, in-
cluding the United States and Canada and all other countries, to
make, use, vend, and give its order for its articles, agents
or assigns, the law as well as all inventions and improvements
in the art of phonographs, graphophones and speaking machines of

1873-1874

every kind, and all supplies and appliances for the same, upon certain terms and conditions set forth in said agreement; which several arrangements and agreements were intended to promote harmony amongst the parties owning the several rights and inventions relating to speaking machines and to the manufacture and sale of the same, and to secure to the Edison Phonograph Works the sole and exclusive right to manufacture such machines and the supplies and appliances therefor for all parts of the world; AND WHEREAS ALSO, in pursuance of said general design and in order to secure larger facilities and increased capital for the Edison Phonograph Works to enable it to carry on such exclusive manufacture, the said defendant, being the President of said last named corporation and the owner of almost the whole of its stock, and being in full control of its corporate action by its Board of Directors, caused the said Edison Phonograph Works to negotiate and propose to carry into effect an agreement with the plaintiff, bearing date on the eleventh day of March, 1890, to be executed simultaneously with the above mentioned agreements of that date, in and by which agreement it was recited that the parties thereto desired to make arrangements for transferring to the Edison Phonograph Works the interests of the plaintiff in its graphophone factory at Hartford and for the acquiring by the said Edison Phonograph Works of certain rights of manufacture then belonging to the plaintiff, on the terms and conditions therein set forth, and which agreement thereupon provided that the capital stock of the Edison Phonograph Works should be increased from three hundred to six hundred thousand dollars, of which fifty two per cent or fifteen hundred and sixty shares of the par value of one hundred dollars each should be transferred to said defendant, Thomas A. Edison, under and pursuant to the terms of a certain agreement made May twelfth, 1888, between him and the Edison Phonograph Works, to which reference was therein made, and forty eight per cent, or fourteen hundred and forty shares of the par value of one hundred dollars each, should be subscribed for by the plaintiff, payable on the demand of the Board of Directors of the Edison Phonograph Company, and that nine hundred and twenty shares thereof should be considered by the Edison Phonograph Works as being paid in full in consideration, first, of the transfer and assignment by the plaintiff to the Edison Phonograph Works of the leasehold interest and other property set forth in said agreement, and, second, of the acquiring by the Edison Phonograph Works of all rights of manufacture then belonging to the plaintiff acquired by said Works by the two agreements executed simultaneously and herein before referred to; and it was further provided that the Edison Phonograph Works should credit on account of the subscription of

the plaintiff for fourteen hundred and forty shares of stock as aforesaid, amounting to one hundred and forty four thousand dollars the sum of ninety two thousand dollars, and that the remainder of the said subscription, to-wit, fifty two thousand dollars, should be payable in cash by the plaintiff upon the demand of the Board of Directors of the Edison Phonograph Works, which sum of ninety two thousand dollars, the consideration of said nine hundred and twenty shares of stock, was by the said agreement to be accepted by both parties as the value of the said leasehold and other property described in detail in a Schedule annexed to said agreement marked "Schedule A, List of property purchased," and by the said agreement it was provided that the plaintiff should, upon the terms aforesaid, assign and transfer to the Edison Phonograph Works, at the solicitation and request of the defendant, its entire right, title and interest in and to the leasehold interest and other property set forth in said Schedule A, and that the plaintiff should covenant that it had full title thereto and that said property was free from all encumbrances except certain periodical payments on said leasehold interest, which were by said agreement to be assumed by the Edison Phonograph Works; AND WHEREAS ALSO the said defendant being desirous that the said negotiation should be completed and that the plaintiff should execute the said agreement and transfer the said property and pay said moneys in pursuance thereof, and wrongfully intending to deceive and injure the plaintiff in the premises, then and there well knowing the condition of the said Edison Phonograph Works, the amount of its indebtedness and the real value of its stock, falsely and deceitfully represented to the plaintiff through its authorized officers and agents that the said corporation was free from all debt, except for its current expenses, and that the stock thereof was then worth two hundred dollars per share. Whereupon, heretofore, to-wit, on the eleventh day of March, eighteen hundred and ninety, at Newark aforesaid, the plaintiff, confiding in the said representations of the defendant made as aforesaid, concluded the said negotiations and executed the said agreement with the Edison Phonograph Works, and in pursuance thereof turned over and delivered to the said corporation all the said leasehold interest and other property, and paid over to it the said sum of fifty two thousand dollars in cash, upon the demand of the directors of said corporation, as the consideration for the said fourteen hundred and forty shares of the stock thereof; WHEREAS, in truth and fact, the said representations were wholly untrue to the knowledge of said defendant, and the said Edison Phonograph Works was then indebted to the said defendant himself in the sum of over two hundred thousand dollars over and

above its current expenses and also upon a mortgage upon its real estate and factory for the sum of ten thousand dollars, and the stock of said corporation was not worth two hundred dollars per share, but was wholly without value, as the defendant well knew. AND the plaintiff saith that the defendant, by means of the premises, on the said eleventh day of March, eighteen hundred and ninety, at Newark aforesaid, falsely and fraudulently deceived the plaintiff in the making of said agreement and accepting said stock in exchange for the property transferred and the money paid under the same as aforesaid, and thereby the said shares of stock have become and are of no use or value to the plaintiff, to-wit, at Newark aforesaid.

AND WHEREAS ALSO, before and at the time of the committing of the grievances hereinafter mentioned, the said defendant was the inventor and owner of what is generally known as the Phonograph, which invention is more particularly described in Letters Patent of the United States, Number 200,521, dated February 19, 1878, for an "Improvement in Phonographs and Speaking Machines," and was also the President and the owner of nearly the whole of the stock of a corporation organized under the laws of the State of New Jersey with a capital stock of three hundred thousand dollars, which corporation was located at Orange, in the County of Essex, and was at the time aforesaid engaged in the manufacture and sale of phonographs and speaking machines: AND WHEREAS ALSO

the plaintiff was, at the time of the committing of the grievances hereinafter mentioned, a corporation organized under the laws of the State of New York, and was possessed of certain rights, title and interest in and to certain Letters Patent for certain inventions relating to graphophones, phonographs and speaking machines, and certain rights of manufacture relating to the same, and was also possessed of a leasehold interest and factory in the City of Hartford, in the State of Connecticut, equipped with valuable machinery for the manufacture of speaking machines: AND WHEREAS ALSO, before and at the time of the committing of the grievances hereinafter mentioned, the said defendant, by an agreement dated March eleventh, 1890, and the said plaintiff, by an agreement of the same date, transferred and assigned to Edison United Phonograph Company, another corporation organized under the laws of the State of New Jersey, certain rights in the said inventions, and relating to the manufacture of speaking machines, for the entire world, except the United States and Canada, and by an agreement of the same date the said Edison United Phonograph Company granted to the Edison Phonograph Works the exclusive right, in all parts of the world, including the United States and Canada

and all other countries, to manufacture for it, and upon its order for its assigns, agents and licensees, but for no one else, all and, inventions and improvements appertaining to phonographs, graphophones and speaking machines of every kind, and all supplies and appliances for the same, upon certain terms and conditions set forth in said agreement; which several arrangements and agreements were intended to promote harmony amongst the parties owning the several rights and inventions relating to speaking machines and to the manufacture and sale of the same, and to secure to the Edison Phonograph Works the sole and exclusive right to manufacture such machines and the supplies and appliances therefor for all parts of the world: AND WHEREAS ALSO, in pursuance of said general design and in order to secure larger facilities and increased capital for the Edison Phonograph Works to enable it to carry on such exclusive manufacture, the said defendant, being the President of said last named corporation and the owner of almost the whole of its stock, and being in full control of its corporate action by its Board of Directors, caused the said Edison Phonograph Works to negotiate and propose to carry into effect an agreement with the plaintiff, bearing date on the eleventh day of March, 1890, to be executed simultaneously with the above mentioned agreements of that date, in and by which agreement it was recited that the parties thereto desired to make arrangements for transferring to the Edison Phonograph Works the interests of the plaintiff in its graphophone factory at Hartford and for the acquiring by the said Edison Phonograph Works of certain rights of manufacture then belonging to the plaintiff, on the terms and conditions therein set forth, and which agreement thereupon provided that the capital stock of the Edison Phonograph Works should be increased from three hundred to six hundred thousand dollars, of which fifty two per cent, or fifteen hundred and sixty shares of the par value of one hundred dollars each, should be transferred to said defendant, Thomas A. Edison, under and pursuant to the terms of a certain agreement made May twelfth, 1888, between him and the Edison Phonograph Works, to which reference was therein made, and forty eight per cent, or fourteen hundred and forty shares of the par value of one hundred dollars each, should be subscribed for by the plaintiff payable on the demand of the Board of Directors of the Edison Phonograph Company, and that nine hundred and twenty shares thereof should be considered by the Edison Phonograph Works as being paid in full in consideration, first, of the transfer and assignment by the plaintiff to the Edison Phonograph Works of the leasehold in-

... Edison Phonograph Works, and in pursu-
terest and other property set forth in said agreement, and, second,
of the acquiring by the Edison Phonograph Works of all rights of
manufacture then belonging to the plaintiff acquired by said Works
by the two agreements executed simultaneously and hereinbefore
referred to; and it was further provided that the Edison Phonograph
Works should credit on account of the subscription of the plaintiff
for fourteen hundred and forty shares of stock as aforesaid,
amounting to one hundred and forty four thousand dollars, the sum
of ninety two thousand dollars, and that the remainder of the said
subscription, to-wit, fifty two thousand dollars, should be payable
in cash, by the plaintiff upon the demand of the Board of Direc-
tors of the Edison Phonograph Works, which sum of ninety two thous-
and dollars, the consideration of said nine hundred and twenty
shares of stock, was by the said agreement to be accepted by both
parties as the value of the said leasehold and other property de-
scribed in detail in a schedule annexed to said agreement marked
"Schedule A, List of property purchased," and by the said agreement
it was provided that the plaintiff should, upon the terms afore-
said, assign and transfer to the Edison Phonograph Works, at the
solicitation and request of the defendant, its entire right, title
and interest in and to the leasehold interest and other property
set forth in said Schedule A, and that the plaintiff should cove-
nant that it had full title thereto and that said property was
free from all encumbrances, except certain periodical payments on
said leasehold interest, which were by said agreement to be as-
sumed by the Edison Phonograph Works: AND WHEREAS ALSO the said
defendant being desirous that the said negotiation should be com-
pleted and that the plaintiff should execute the said agreement
and transfer the said property and pay said moneys in pursuance
thereof, and wrongfully intending to deceive and injure the plain-
tiff in the premises, then and there well knowing the condition of
the said Edison Phonograph Works, the amount of its indebtedness
and the real value of its stock, by his agent Samuel Insull, acting
for him in that behalf and speaking for him, the said defendant,
in his presence and hearing, falsely and deceitfully represented
to the plaintiff, through its authorized officers and agents, that
the said corporation was free from all debt, except for its current
expenses, and that the stock thereof was then worth two hundred
dollars per share. WHEREUPON, heretofore, to-wit, on the eleventh
day of March, eighteen hundred and ninety, at Newark aforesaid, the
plaintiff, confiding in the said representations of the defendant
made as aforesaid, concluded the said negotiations and executed

the said agreement with the Edison Phonograph Works, and in pursuance thereof turned over and delivered to the said corporation all the said leasehold interest and other property, and paid over to it the said sum of fifty two thousand dollars, in cash, upon the demand of the directors of said corporation, as the consideration for the said fourteen hundred and forty shares of the stock thereof: WHEREAS, in truth and fact, the said representations were wholly untrue to the knowledge of said defendant, and the said Edison Phonograph Works was then indebted to the said defendant himself in the sum of over two hundred thousand dollars over and above its current expenses and also upon a mortgage upon its real estate and factory for the sum of ten thousand dollars, and the stock of said corporation was not worth two hundred dollars per share, but was wholly without value, as the defendant well knew. AND the plaintiff saith that the defendant, by means of the premises, on the said eleventh day of March, eighteen hundred and ninety, at Newark aforesaid, falsely and fraudulently deceived the plaintiff in the making of said agreement and accepting said stock in exchange for the property transferred and the money paid under the same as aforesaid, and thereby the said shares of stock have become and are of no use or value to the plaintiff, to-wit, at Newark aforesaid.

WHEREFORE, the plaintiff saith that he is injured and hath sustained damage to the amount of three hundred thousand dollars, and therefore he brings his suit, &c.

A. Q. KEASBEY & SONS:

Attys. of Plaintiff.

AGREEMENT made this seventh day of April, 1898, between
EDISON UNITED PHONOGRAPH COMPANY, INTERNATIONAL GRAPHOPHONE
COMPANY, EDISON PHONOGRAPH WORKS and THOMAS A. EDISON.

WHEREAS, the following suits are pending in the New
Jersey Court of Chancery and in the New Jersey Supreme Court
the deposition of which is controlled by the parties hereto
to wit:-

Edison United Phonograph Company,	:	
Complainant,	:	
	:	Court of Chancery
and	:	
	:	Docket 3, page 426.
Edison Phonograph Works,	:	
and the North American	:	
Phonograph Company,	:	
Defendants	:	

Thomas A. Edison	:	
	:	New Jersey Supreme Court
vs	:	On Contract
	:	Docket 4, page 3.
Edison United Phonograph Company,	:	

International Graphophone Company	:	
	:	New Jersey Supreme Court
	:	In Tort
vs	:	Docket 4. page 1.
	:	
Thomas A. Edison.	:	

George E. Gauraud and	:	
Thomas A. Edison,	:	
Complainants	:	Court of Chancery
	:	
and	:	Docket 4. page 63.
The Edison United Phono-	:	
graph Company, Thomas, Coch-	:	
ran, President, George N.	:	
Morrison, Secretary, and	:	
Henry Seligman Treasurer,	:	
and the International Graph-	:	
ophone Company,	:	
Defendants	:	

Thomas A. Edison and
George E. Gauraud,
Complainants.

and

Edison United Phonograph
Co., Thomas Cochran, Thomas
Dolan, Henry Seligman, D.
Willis James, Henry G. Marquand,
Dorcas O. Mills, Alfred O. Tate,
and John Searles and The In-
ternational Graphophone Company:
Defendants

COURT OF CHANCERY

Docket 4. page 64

Edison United Phonograph Company:
Complainant

and

Thomas A. Edison and Edison
Phonograph Works

COURT OF CHANCERY

Docket 4. page 191

In consideration of the sum of one Dollar, paid by
each party to the other, and the mutual agreements herein
contained, it is hereby agreed as follows:-

1. The above entitled suits now pending in the
Chancery Court of New Jersey and in the Supreme Court of
New Jersey shall be discontinued or dismissed without costs

11. Thomas A. Edison shall pay to the Edison United
Phonograph Company the sum of Two thousand Dollars (\$2,000.)
immediately upon the distribution of the assets in the hands
of John R. Hardin as Receiver of the North American Phonograph
Company.

111. The parties hereto shall themselves execute and
deliver, and shall cause their solicitors in said suits to
sign and present to said Courts the necessary papers for
carrying out the purposes of this agreement.

IV. Edison United Phonograph Company shall withdraw or release its claim filed with John R. Hardin as Receiver of the North American Phonograph Company, and shall consent to the dismissal, without costs to either party as against the other, of the appeal from the disallowance of said claim by said Receiver.

SIGNED, Sealed and Delivered, the day and year first above written.

Edison United Phonograph Company,

By Jno. E. Searles.

President

(L.S.) Attest
G. N. Morrison.
Secretary

INTERNATIONAL GRAPHOPHONE COMPANY

By Jno. E. Searles

President.

(L.S.) Attest
G.N.Morrison
Secretary

EDISON PHONOGRAPH WORKS

By Thomas A. Edison

President.

(L.S.) Attest
J. F. Randolph
Secretary

Witness to signature :
of Thomas A. Edison : THOMAS A. EDISON.
W.S.Mallory